

(b) *Immediate suspension.* If SBA determines that one or more grounds set forth in § 120.854(a) exist and further determines that immediate action is necessary to prevent the risk of significant loss to SBA or to prevent significant impairment of the integrity of the 504 program, the AA/FA may issue a written notice of immediate suspension to a CDC, suspending all or certain activities of a CDC pertaining to the 504 program, and such suspension will be effective as of the date of the notice. SBA may combine a notice of immediate suspension with any enforcement action set forth in paragraphs (a), (c) or (d) of this section.

(c) *Suspension or termination of ALP CDC.* Upon a determination that one or more of the grounds set forth in § 120.854(b) exist, the AA/FA or his or her authorized delegate may, in SBA's sole discretion, suspend or terminate a CDC's authority to participate as an ALP CDC.

(d) *Suspension or termination of PCLP CDC.* Upon a determination that one or more of the grounds set forth in § 120.854(c) exist, the AA/FA or his or her authorized delegate may, in SBA's sole discretion, suspend or terminate a CDC's authority to participate as a PCLP CDC.

(e) *Term of suspension.* Any suspension issued under this section will be for a term determined by SBA in its sole discretion.

§ 120.856 Enforcement procedures.

(a) *SBA's notice to CDC of enforcement action.* (1) Prior to undertaking an enforcement action set forth in § 120.855(a), (c) or (d) the AA/FA or his or her authorized delegate must issue a written notice to the affected CDC identifying the proposed enforcement action, setting forth in reasonable detail the underlying facts and reasons for the proposed action and, if a suspension also is proposed, stating the term of the proposed suspension.

(2) If the AA/FA or his or her authorized delegate undertakes an immediate suspension pursuant to § 120.855(b), he or she must issue a written notice to the affected CDC identifying the scope and term of the suspension, and setting forth in reasonable detail the underlying facts and reasons for the proposed action.

(3) If a proposed enforcement action or immediate suspension is based upon information obtained from a party other than the CDC or SBA, SBA's notice of proposed action or immediate suspension will provide copies of documentation received from such third party, or the name of the third party in case of oral information, unless SBA

determines that there are compelling reasons not to provide such information. If compelling reasons exist, SBA will provide a summary of the information it received to the CDC.

(b) *CDC's opportunity to object.* (1) A CDC that desires to contest a proposed enforcement action or an immediate suspension must file, within 30 calendar days of its receipt of the notice or within some other term established by SBA in its notice, a written objection with the AA/FA or other SBA official identified in the notice. Notice will be presumed to have been received within five days of the date of the notice unless the CDC can provide compelling evidence to the contrary.

(2) The objection must set forth in detail all grounds known to the CDC to contest the proposed action or immediate suspension and all mitigating factors, and must include documentation that the CDC believes is most supportive of its objection. A CDC must exhaust this administrative remedy in order to preserve its objection to a proposed enforcement action or an immediate suspension.

(3) If a CDC can show legitimate reasons why it does not understand the reasons given by SBA in its notice of the action, the CDC may request clarification from the Agency. SBA will provide the requested clarification in writing to the CDC or notify the CDC in writing that such clarification is not necessary. SBA, in its sole discretion, will further advise in writing whether the CDC may have additional time to present its objection to the notice.

(4) A CDC may request additional time to respond to SBA's notice if it can show that there are compelling reasons why it is not able to respond within the 30-day timeframe or timeframe given by the notice for response. If such a request is submitted to the Agency, SBA may, in its sole discretion, provide the CDC with additional time to respond to the notice of proposed action or immediate suspension.

(5) Prior to the issuance of a final decision by SBA under § 120.856(c), if a CDC can show that there is newly discovered material evidence which, despite the CDC's exercise of due diligence, could not have been discovered within the timeframe given by SBA to respond to a notice, or that there are compelling reasons beyond the CDC's control why it was not able to present a material fact or argument to the AA/FA or other deciding SBA official in its objection, and that the CDC has been prejudiced by not being able to present such information, the CDC may submit such information to SBA and request that the Agency

consider such information in its final decision.

(c) *SBA's decision on CDC's objection to proposed action.* (1) If the affected CDC files a timely written objection to a proposed enforcement action, the AA/FA or his or her authorized delegate must issue a written notice of decision to the affected CDC advising whether SBA is undertaking the proposed enforcement action setting forth the grounds for the decision. SBA will issue such a notice of decision whenever it deems appropriate.

(2) If the affected CDC files a timely written objection to a notice of immediate suspension, the AA/FA or his or her authorized delegate must issue a written notice of final decision to the affected CDC within 90 days of receiving the CDC's objection advising whether SBA is continuing with the immediate suspension. If the CDC submits additional information to SBA after submitting its objection pursuant to § 120.856(b)(5), SBA must issue its final decision within 90 days of receiving such information.

(3) Prior to issuing a notice of decision, SBA in its sole discretion can request additional information from the affected CDC or other parties and conduct any other investigation it deems appropriate. If SBA determines, in its sole discretion, to consider an untimely objection, it must issue a notice of decision pursuant to this paragraph.

(d) *SBA's notice of final agency decision.* If SBA chooses not to consider an untimely objection or if the affected CDC fails to file a written objection to a proposed enforcement action or an immediate suspension, and if SBA continues to believe that such proposed enforcement action or immediate suspension is appropriate, the AA/FA or his or her authorized delegate must issue a written notice of decision to the affected CDC that SBA is undertaking one or more of the proposed enforcement actions against the CDC or that SBA will continue to pursue an immediate suspension of the CDC. Such a notice of decision need not state any grounds for the action other than to reference the CDC's failure to file a timely objection, and represents the final agency decision. If the affected CDC fails to file a written objection to an immediate suspension, SBA need not issue any further notice to the CDC.

(e) *Appeal to OHA.* (1) A CDC may appeal from an SBA notice of decision issued pursuant to paragraph (c) of this section to the SBA Office of Hearings and Appeals (OHA). The rules and procedures set forth in part 134 of this chapter will govern such appeals.